



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 06, 2022

IN THE MATTER OF:

Appeal Board No. 621654

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant, a professional employee of an educational institution, should be held ineligible to receive benefits, effective December 21, 2020, between two successive academic terms because the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10).

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed February 25, 2022 (), the Administrative Law Judge granted the employer's application to reopen A.L.J. Case No. 021-39153, overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board, insofar as it overruled the employer's objection and sustained the initial determination of eligibility for benefits. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as an adjunct professor of history for Hunter College for several years. He was a member a union in contractual relations with the employer. The claimant's pay rate as an adjunct associate

professor is controlled by union contract, the PSC/CUNY Memorandum of Agreement 2019, effective December 1, 2017 through February 28, 2023. The Memorandum of Agreement also set out the allocation of paid office hours for adjuncts, effective at the start of the Spring 2020 semester.

During the Fall 2019 semester, the claimant taught three courses at 45 teaching hours per course, for a total of 135 teaching hours, and had 15 paid office hours. His pay rate was \$94.72 per hour, and he earned \$14,208 for that semester. During the Spring 2020 semester the claimant taught three courses at 45 teaching hours per course, for a total of 135 teaching hours, and had 45 paid office hours. He was paid \$98.55 per hour, and he earned \$17,739 in that semester.

On June 29, 2020, the employer's Provost sent the claimant a letter which stated that the employer had re-appointed him to a three-year adjunct appointment for the academic years 2020-21, 2021-22, and 2022-23 in the History department at Hunter College of the City University of New York at the rank of adjunct associate professor for which his salary would be \$98.55 per hour.

During the Fall 2020 semester, which ran from August 26, 2020 to December 20, 2020, the claimant taught three courses at 45 teaching hours per course, for a total of 135 teaching hours, and had 45 paid office hours. He was paid \$98.55 per hour and earned \$17,739 for the Fall 2020 semester.

On December 10, 2020, the employer, sent the claimant a Teaching Adjunct Proposed Assignment Letter which indicated that the claimant was appointed as an adjunct associate professor for the Spring semester, January 29, 2021-May 25, 2021, teaching 90 hours, with 30 office hours, total 120 hours, at a rate of \$98.55 for a total salary per semester of \$11,800. It stated that he would teach the History of Latin America in the 19th and 20th centuries, 45 credit hours on Tuesdays and Fridays from 9:45 AM to 11 AM and the Andean region since 1800 for 45 hours on Tuesdays and Fridays from 2:10 PM to 3:25 PM. It was signed by the claimant on December 13, 2020. On January 8, 2021 the claimant and the employer signed an agreement, memorialized on a Workload Reporting Form for Adjunct Structural Staff Members Only, for the claimant to teach the History of Latin America 19th and 20th Century (45 teaching hours), the Andean Region since 1800 (45 teaching hours), and Historical Research (18 teaching hours) for a total of 108 teaching hours.

OPINION: Labor Law § 590.10 requires that the weeks and wages earned by an employee in a professional capacity for an educational institution be disregarded for purposes of determining whether such an employee is eligible to file a valid original claim for benefits during a period between academic terms or years if such employee had reasonable assurance of returning to work for an educational institution in the following semester or academic year. Reasonable assurance exists when an employing educational institution expresses a good-faith willingness to rehire a professional employee of an educational institution for the upcoming school year or term and the terms and conditions of the offer are not substantially less favorable to the claimant than in the prior year or term. It is the responsibility of the employer to demonstrate that such an offer was made to the claimant.

The United States Department of Labor Employment & Training Administration Unemployment Insurance Program Letter (UIPL) 5-17, dated December 22, 2016, gives guidance with respect to interpreting the meaning of reasonable assurance under Sections 3304(a)(6)(A)(i) - (iv) of the Federal Unemployment Insurance Tax Act (FUTA). Pursuant to UIPL 5-17, in order for a claimant to have reasonable assurance in the following year or term, the offered employment must satisfy three prerequisites: (1) the offer of employment

may be written, oral, or implied, and must be a genuine offer; that is, an offer made by an individual with actual authority to offer employment; (2) the employment offered in the following year or term, or remainder of the current academic year or term, must be in the same capacity; and (3) the economic conditions of the job offered may not be considerably less in the following academic year or term (or portion thereof) than in the first academic year or term (or portion thereof). The Department interprets "considerably less" to mean that the economic conditions of the job offered will be less than ninety percent of the amount the claimant earned in the first academic year or term.

The credible evidence establishes that the employer gave the claimant reasonable assurance of continued employment of continued substantially similar employment for the Spring 2021 semester. We disagree with the analysis of the Administrative Law Judge that Matter of Rosenbaum, 125 AD3d 1019 (3rd Dept 2015) does not apply to this case. The credible evidence establishes that the claimant received a letter of reappointment from the employer which stated that the employer had re-appointed him to a three-year adjunct appointment for the academic years 2020-21, 2021-22, and 2022-23 in the History department at

Hunter College of the City University of New York at the rank of adjunct associate professor. Consequently, a year-to-year comparison with the 2019-2020 academic year must be done to determine whether the claimant has been offered reasonable assurance. The re-appointment letter of June 29, 2020 stated that the claimant would earn \$98.55 per hour, but it did not list any specific courses being offered to the claimant for the 2020-2021 school year, nor did the letter states the number of credit hours that the claimant would be given to teach. Absent those details, the letter was insufficient to be considered an offer of reasonable assurance for the entirety of the 2020-2021 academic year.

The credible evidence also establishes that on December 10, 2020, the employer sent the claimant a letter indicating that he had been recommended for reappointment for the Spring 2021 semester to teach two courses, History of Latin America in the 19th and 20th Century and Andean Region since 1800, with 90 teaching hours and 30 office hours for a total of 120 hours at an hourly rate of \$98.55 and a total salary per semester of \$11,826; this letter provided sufficient detail to constitute an offer of reasonable assurance for the Spring 2021 semester (See Appeal Board No. 607796). As of the date the college provided the claimant with his Spring 2021 semester schedule and his pay rate, which the letters of June 29, 2020 and December 10, 2020, read together, provide, it can be determined whether the statutory requirement of meeting the substantial terms and conditions of employment can be satisfied for the Spring 2021 term (see Appeal Board No. 585792, discussing Matter of Rosenbaum, 125 AD3d 1019 (3rd Dept 2015)).

It is undisputed that in the Fall 2019 semester the claimant taught three courses, with a total of 135 teaching hours and 15 paid office hours, at a rate of \$94.72 per hour and that he earned a total of \$14,208 that semester and that during the Spring 2020 semester he again taught three courses, with a total of 135 teaching hours and 45 paid office hours at \$98.55 per hour and earned \$17,739 in the semester. Therefore, in the 2019-2020 academic year, the claimant's earnings totaled \$31,947. Ninety percent of that is \$28,752.30.

It is also undisputed that the claimant taught three courses in the Fall 2020 semester, with a total of 135 teaching hours and 45 office hours, for a total of 180 hours paid at \$98.55 and that he earned \$17,739 in the Fall 2020 semester. The Spring 2021 schedule and pay rate offered in the letters of June 29, 2020 and December 10, 2020, showed the claimant earning \$11,826 in the Spring 2021 semester. That amount added to the claimant's earnings from

the Fall 2020 semester, \$17,739, equals \$29,565, which is more than 90% of the amount claimant had earned in the 2019-2020 academic year. Thus, a determination can be made that, as of December 10, 2020, the claimant was offered substantially the same terms and conditions for the 2020-2021 academic year as he had enjoyed in the 2019-2020 academic year. As reasonable assurance is effective the Monday after it is given, or the Monday after the end of the school term, whichever is later, we conclude that the claimant had reasonable assurance of substantially similar employment in the Spring 2021 semester, effective December 21, 2020, and the exclusionary provisions of Labor Law §590

(10) apply effective December 21, 2020. Therefore, the wages earned by the claimant cannot be used to establish a valid original claim for the period between the Fall 2020 semester in the Spring 2021 semester.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The employer's objection, that the claimant, a professional employee of an educational institution, should be held ineligible to receive benefits, effective December 20, 2020, between two successive academic terms because the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10), is

sustained, effective December 21, 2020.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER